modes of revocation laid down in the Wills Act. Thus, writing across a will that it is revoked, and throwing it into the wastepaper basket, will not revoke the will if it is in fact preserved. In *Cheese* v. *Lovejoy*,[3] the testator drew his pen through the lines of various parts of his will, wrote on the back of it, "This is revoked" and threw it among a heap of waste paper in his sitting room. A servant took it up and put it on a table in the kitchen. It remained lying about in the kitchen till the testator's death seven or eight years afterwards, and was then found uninjured. The Court of Appeal held that the will was not revoked, because whatever the testator intended, the will had not been actually injured. James L.J. said, at page 253:—

"It is clear that a symbolical burning will not do. A symbolical tearing will not do, nor will a symbolical destruction. There must be the act as well as the intention. As it was put by Dr. Deane in the court below, 'All the destroying in the world without intention will not revoke a will, nor will all the intention in the world without destroying: there must be the two'."

The revocatory act, if done by a third person by the testator's direction, must also be done in his presence. Thus, if a testator writes to his solicitor or telephones him, instructing him to destroy the testator's will, the solicitor's compliance would be ineffective to revoke the will. A solicitor who complies with such a direction without advising his client of the consequences would be guilty of a considerable professional error. See *In the Estate of De Kremer*.[4]

It is very unfortunate for the defendant, that although he was present and saw his father wrote out A.B.43, the defendant did not sign on A.B.43 as a witness or get another person, for example, a nurse from the hospital, to sign it. Had the letter A.B.43 been attested by two witnesses, it would have been sufficient to revoke the Will in question on the authority of *In the Goods of Durance*,[5] which was followed and applied by the Court of Appeal in *Re Spracklan's Estate*.[6]

In my judgment, the plaintiffs have established the Will of the testator. It was executed in accordance with the requirements of section 6 of the Wills Act. When executing the Will, the testator was alert and in command of his mental faculties. He executed the Will with full knowledge and understanding of its contents. The Will has not been revoked and is entitled to probate. The defendant's counter-claim is dismissed.

Counterclaim dismissed.

Solicitors: *Suppiah & Co.; Pillai & Co.*

RAYMOND BANHAM & ANOR. v. CONSOLIDATED HOTELS LIMITED

[O.C.J. (Winslow J.) November 13, 1975]
[Singapore — Suit No. 2455 of 1974]

Contract — Professional services rendered — Claim for payment — Failure of plaintiffs as overseas professional engineers employed in Singapore to register themselves under Professional Engineers Act — Whether contract is illegal and unenforceable — Professional Engineers Act (Cap. 225), ss. 2, 8, 18 and 19.

Engineers — Overseas professional engineers — Professional requirement — Non-compliance with registration requirement — Whether contract becomes illegal and unenforceable — Professional Engineers Act (Cap. 225), ss. 2, 8, 18 and 19.

The plaintiffs, partners of a firm of consulting Mechanical and Electrical Engineers practising in Hongkong, rendered professional services in respect of the Hotel Sheraton project owned by the defendants. This was pursuant to a contract made between the plaintiffs and the defendants. The plaintiffs claimed for the sum of $106,250 being 85% of the value of work completed by them.

The defendants contended that the said contract was illegal and unenforceable in court because the plaintiffs were not registered as required by the Professional Engineers Act (Cap. 225).

Held: (1) the plaintiffs were engaged in professional engineering work in Singapore even though the drawing of plans was carried out in Hongkong;

(2) an overseas professional engineer who undertakes employment as such in Singapore even in respect of one isolated project as this one would be contravening the provisions of section 18 should he fail to register himself unless he engages in such employment under the direction or supervision of a registered professional engineer;

(3) services performed by the plaintiffs under the aforesaid contract were therefore illegal in that the plaintiffs never took steps to get themselves registered beforehand nor to engage in such services under the direction or supervision of a registered professional engineer;

(4) the plaintiffs' claim was therefore unenforceable notwithstanding the defendants' own participation in this illegal contract.

Cases referred to:-

(1) *Re Mahmoud and Ispahani* [1921] All E.R. Rep. 217.
(2) *Cope v. Rowlands* (1836) 150 E.R. 707.
(3) *Archbolds (Freightage) Ltd.* v. *S. Spanglett* [1961] 1 Q.B. 374.

CIVIL SUIT.

C. S. Wu for the plaintiffs.

Robert Hsieh for the defendants.

Winslow J.: The validity of the plaintiffs' claim against the defendants, for professional services rendered, in the sum of $106,250 being 85% of the value of work completed by them upon a quantum meruit basis is challenged by the defendants on a number of grounds, the chief one of which is that the contract upon which the claim is based is an illegal one and therefore unenforceable.

The plaintiffs claim is made by them under O.XV r.12(1) in a representative capacity as partners of the firm of J. Roger Preston and Partners, a firm of Consulting Mechanical and Electrical Engineers practising in Hongkong and to dispose of an objection raised against the claim on the ground that the plaintiffs were not parties to the said contract and that accordingly have no cause of action I would hold that I am satisfied on the evidence that they properly appear in a

representative capacity on behalf of the whole firm of J. Roger Preston & Partners of whom they themselves are now partners and that they had been so authorised to represent the partnership, at least by two of the partners from London who paid a visit to Hongkong in connection with the funeral of Mr. J. N. Buss, senior partner of the firm who died in June 1972. Mr. Buss was at the time of the signing of the contract the only resident partner in Hongkong, the remainder being residents in London. The plaintiffs who had been associates in the firm of J. Roger Preston & Partners, previously, became partners after the death of Mr. Buss and are still partners being the only partners who are resident in Hongkong. In so far as is known all the remaining partners are resident in London. I am satisfied that they represent the partnership and that they and the persons represented have the same interest in the proceedings. The objection to their acting as plaintiffs in this action accordingly fails.

The crucial issue for determination accordingly, as I have already stated earlier, is whether the contract of July 17, 1971, whereby the defendants (as owner) in respect of the proposed Sheraton Hotel project at the junction of North Bridge Road and Coleman Street purported to appoint the firm of J. Roger Preston & Partners of Hongkong to be the mechanical and electrical consultants thereof, is illegal in itself and accordingly unenforceable. It should be noted that the appointment of the firm is conditional upon the senior partner's taking personal charge of the duties and obligations of the firm relating to the project together with certain senior engineers whose duties are specified as well as other necessary "supporting staff". The scope of the services to be rendered by th firm is set out in detail in clause 2 of the contract including —

1. Services relating to the pre-construction phase involving what may briefly be described as the design stage including preparation and submission of all plans and drawings with calculations for the approval of the appropriate authority for which 50% of the total agreed fee of $250,000 would be paid;

2. The actual construction stage involving the supervision of construction work including the work of successful contractors after tenders have been invited and a decision taken by the owner thereon for which the balance of 50% of the total fee would be paid in instalments.

In deciding whether a contract is illegal in itself a distinction must be made between contracts which are illegal as a result of their prohibition by statute and contracts which are illegal at common law. In the present case it is alleged that the contract is illegal because it is prohibited by the Professional Engineers Act of 1970 (Cap. 225) which came into force on January 2, 1971.

Such prohibition by statute can be either express or implied. *Re Mahmoud and Ispahani*[1] is an example of express prohibition. In that case, the statutory order in question provided that no one should buy or sell linseed oil without a licence. Although the plaintiff had a licence to sell to other licensed dealers the defendant did not possess a licence in this respect but he induced the plaintiff to sell linseed oil to him on the basis of a fraudulent statement to the plaintiff that he did have a licence. When the defendant refused to take delivery of the oil sold to him the plaintiff sued him for damages. The plaintiff failed in his action, although he was an entirely innocent party, on the ground that the statutory order expressly prohibited any contract of sale if either party was unlicensed.

So much for express prohibition by statute.

In *Cope* v. *Rowlands*[2] it was held that there was an implied prohibition in a statute which required brokers to be licensed for the purpose of buying and selling stock. The plaintiff who was unlicensed bought and sold stock for the defendant and he failed in his action for his fee for the work and labour undertaken by him on the ground that the statute in question, by imposing a penalty in the case of unlicensed brokers, must be taken to imply a prohibition of all unlicensed persons from acting as brokers, for the benefit and security of the public and "consequently, to prohibit by necessary inference, all contracts which such persons make for compensation to themselves for so acting." (*per* Parke B.). Not all statutes however have been held to prohibit contracts by implication (see *Archbolds (Freightage) Ltd.* v. *S. Spanglett*[3]).

If a contract is illegal in itself it is clear that neither party can sue on that contract and it is the contention of the defendants in this case that the contract of July 17, 1971 is such a contract on which the plaintiffs cannot succeed because, by virtue of its illegality by statute, it is unenforceable in these courts.

The Professional Engineers Act prohibits contracts for the employment of persons who are not registered as professional engineers under section 19 of the Act and a penalty thereunder is provided for contravention thereof. A professional engineer is defined by section 2 to mean a person "engaged in professional engineering work" and "professional engineering work" is also therein defined to include "any professional service such as consultation, investigation, evaluation, planning, design, or responsible supervision of construction or operation ... in connection" *inter alia*, "with any buildings, or work or projects wherein the public interest and welfare ... is concerned, where such professional service requires the application of engineering principles and data."

Section 8 of the Act provides a penalty in the case of any person who, *inter alia*, under paragraph (c) thereof "engages in professional engineering work except under the direction or supervision of a registered professional engineer."

The contract of July 17, 1971 between the plaintiffs' firm and the defendants does provide for the employment of the late Mr. Buss and his partners named therein who were practising under the firm name of J. Roger Preston & Partners in Hongkong to be the mechanical and electrical consultants for the Singapore Sheraton Hotel project and it cannot be denied that the work they were required to do falls squarely within the definition of professional engineering work in which they were actively engaged from July 1971 until at least the death of Mr. Buss in June 1972 after which date one or the other or others of three engineers (including the plaintiffs) from his firm continued to be so engaged for a short period till early July 1972. For a very short period, therefore, Mr. Buss was no longer in personal charge of the duties and obligations of the firm as required by Clause 1 of the contract.

The contract virtually abated with his death on June 26, 1972 and the firm stopped work in early July 1972 because it had "received no further instructions and no payments" as requested by the firm, even of an interim claim for $75,000 on April 14, 1972 (AB73).

It was also shortly after this (see AB74 of June 1, 1972) that the firm came to know as did the Project Director (Mr. Nanda) on behalf of the defendants that amendments to the original architectural plans as drawn by the Design Architect, Yamasaki of U.S.A., were in contemplation with a change in the design architects to another firm of architects from Hongkong. This would have virtually nullified the value of the work done under the original plans up to about that time and not unnaturally everybody was getting restive including Mr. Nanda who eventually resigned.

According to the project Architect, Mr. William Chen (PW1), the design Architect Yamasaki was replaced in mid-1972 by Jackson Wong and Auyong of Hongkong and he believed that T.A.P., local consulting mechanical and electrical engineers were engaged to replace the firm represented by the plaintiffs around the same time. The plaintiffs' firm submitted its plans to the Project Architect who was supposed to be responsible for submitting them to the relevant Departments for approval but in fact no plans other than Drainage and Sewerage plans were in fact submitted by him to relevant Departments because they were not yet ready for submission. He remembered receiving most of the plans in Exhibit D3 sent to him by the plaintiffs' firm. Moreover no approval was ever given of any of the plans he received because the stage for overall approval of all plans of the project, whether architectural or otherwise, had not been reached.

Counsel for the plaintiffs submits that his clients were not engaged in professional engineering work within the meaning of the Act and that they were accordingly not required to be registered. Mr. Buss certainly was not registered, nor were Mr. Banham, Mr. H. K. Tsang (PW2) and Mr. K. T. Chen of the same firm who were actively engaged in the project on behalf of the firm. Nor, so far as the evidence shows, were any of all four of them qualified for registration at the date of the contract *i.e.* July 17, 1971. By April 30, 1971, rules of procedure had already came into operation enabling registration to be effected under the Act which itself came into force on January 2, 1971. The Act and the rules accordingly preceded the date of the contract in question.

I find myself unable to agree with Mr. Wu, their counsel, that these persons were not engaged in professional engineering work in Singapore even though the drawing of plans was carried out in Hongkong. There is no doubt that they were engaged in consultations etc. in Singapore with others concerned in the project as well as with relevant Departments and were in fact carrying out professional services under the contract throughout the period in question even though they may have been commuting from time to time between Hongkong and Singapore. They were able to carry out their duties as professional engineers in Singapore under the contract effectively notwithstanding the fact that they did not in fact reside here on a more permanent basis for the whole of the period until July 1972. Counsel referred to meanings of the word "engaged" and "practise" contained in the 2nd Edition of *Words and Phrases* by Saunders which I am unable to accept as concluding the matter in favour of each of these practising engineers from Hongkong who were engaged in carrying out professional services for the defendants whilst employed on the Singapore project under the contract in question.

I am therefore of the opinion that the engineers employed on this project were required to be registered under the Professional Engineers Act as of July 17, 1971.

It was not sufficient for them to carry out their duties and obligations under the contract by submitting their plans through the Project Architect who, both the defendants and the plaintiffs' firm arranged, would submit their plans to the relevant authorities. Although the Local Government (Building) Regulations, 1966, which is still in force, enable plans to be submitted by a registered architect, the fact remains that the Professional Engineers Act requires the engineers concerned, however outstanding their competence and capabilities may be as engineers in another jurisdiction, to be registered first unless they were acting under the direction or supervision of a professional engineer registered in Singapore under the Act, which they were not. Registration under section 6(2) of the Architects Act has no relevance to the present claim because none of the engineers concerned was so registered.

Although moral turpitude in the sense of dishonesty or fraud has not been revealed by the facts of the case before me the fact remains that services were being performed under this contract by the plaintiffs' firm from July 17, 1971 which were illegal in that their engineers never took steps to get themselves registered beforehand nor to engage in such services under the direction or supervision of a registered professional engineer.

No steps were taken until early 1972, according to Mr. Tsang (PW2), to apply for registration after he heard from the P.U.B. Electrical Engineer that mechanical and electrical engineers submitting plans and doing site supervision work had to be registered. Although both he and Mr. Banham (the two plaintiffs) submitted application forms, according to him, neither of these gentlemen was qualified to be registered under the Act at that time. It was only in 1973 that the Californian qualification possessed by Tsang was first recognised by the Board.

One would have expected engineers from overseas to familiarise themselves with the laws of Singapore with regard to matters affecting their own profession before entering into contracts such as that of July 17, 1971. Clause 1 of the contract actually so provides — "a senior engineer to be based in Singapore at the initial stage and during the Design stage for the purpose of investigation and familiarisation from the local authorities with regard to local laws and bye-laws, local practice and all other requirements of local authorities". Whilst acting in close association with others in the same profession as well as architects like William Chen (the project architect and co-ordinator) it seems almost inconceivable that their attention was not drawn to the requirements relating to registration of themselves as professional engineers. It is true that the Act had come into force only a little more than six months earlier and that rules had been

made for registration thereunder by May 1971. According to the Registrar of the Professional Engineers Board officers of the relevant Departments consulted by the project and its corps of professional advisers and employees would not concern themselves with questions like whether any of them were professionally registered or otherwise. This would be the concern of the professions themselves and the Boards responsible for regulating the registration and conduct of members of such professions.

The question is whether, when A employs B to perform services of a professional nature which, by law, B can only perform if registered as a member of that profession, A can employ B who is not so registered at the date of the contract of employment without being a party to a contract which is illegal in itself. In my judgment, harsh though the result may appear to be, such a contract would be illegal and no question of *mens rea* or wicked intention arises for consideration so long as it is for the public benefit and safety that a penalty is imposed on those who contravene a provision against such employment. Section 19 of the Act is such a provision.

Section 18 similarly prohibits any unregistered person from practising as a registered professional engineer and, in particular, from engaging in professional engineering work unless he does so under the direction or supervision of a registered professional engineer. Notwithstanding submissions to the contrary, it seems to me that an overseas professional engineer who undertakes employment as such in Singapore even in respect of one isolated project such as this one would be contravening the provisions of section 18 should he fail to register himself unless he engages in such employment under the direction or supervision of a registered professional engineer or succeeds beforehand in being exempted by the Minister from the provisions of this section and from any rules made thereunder by virtue of section 23 of the Act.

I am aware that to hold that the contract is illegal *ab initio* may appear to be harsh but such is the position with regard to illegal contracts where both parties have contravened the law and the plaintiffs, much as I may sympathise with them, are left without remedy. Ignorance of the law or even innocent participation in such a contract cannot avail the plaintiffs in the absence of any transitional savings provision in the Act empowering persons like the plaintiffs to continue providing engineering services in Singapore without registration after January 2, 1971 as they were apparently able to do prior to the coming into force of the Act on that date. It should be remembered that even an overseas lawyer who intends to appear in one case only in Singapore has to be admitted to practise as an advocate and solicitor under section 18 of the Legal Profession Act (Cap. 217).

The defendants accordingly succeed, notwithstanding their own participation in this illegal contract, in their contention that the plaintiffs' claim is unenforceable. The claim is accordingly, with regret, dismissed with costs.

Claim dismissed.

Solicitors: *Donaldson & Burkinshaw; Boswell, Hsieh & Lim.*

TOBACCO IMPORTERS AND MANUFACTURERS SDN. BHD. v. THE REGISTRAR OF TRADE MARKS, SINGAPORE

[O.C.J. (Kulasekaram J.) October 7, 1975]
[Singapore — Originating Motion No. 5 of 1974]

Trade Mark — Application for registration of trade mark on carton cut-out — Registrar rejected application — Mark not distinctive but highly descriptive — Appeal to court dismissed — Grounds of decision — Trade Marks Act (Cap. 206), s. 10(1) and (2).

Trade Marks — "Virginia gold" mark — Tobacco trade — Whether common to trade.

The appellants applied for the registration of a trade mark contained on a carton cut-out from a white and red cigarette packet in Class 34 in respect of cigarettes. The main features on the said mark are as follows:—

(1) The panel is almost half white and half red where the red area divides the panel by a centre red rectangular band;

(2) On the centre red half of the panel appear in bold white letters the words "VIRGINIA GOLD";

(3) A pictorial device of the 2 golden coloured tobacco leaves is embossed with the top half of the leaves falling on the red panel and the bottom half of the leaves falling on the lower white panel.

The Registrar of Trade Marks considered the three aforesaid main features of the mark separately and concluded that none of the said features satisfied any one of the requirements under the five heads (a) to (e) of section 10(1) of the Trade Marks Act. The appellants then appealed against the Registrar's decision refusing their application.

Held: (1) before arriving at a decision whether a mark should be registered or not, one should properly look at the mark as a whole and not merely at its main features;

(2) the words "VIRGINIA GOLD" are so strongly descriptive of the character and quality of the goods that they are ill adapted inherently to distinguish the goods of the appellants from like goods of other traders and manufacturers. The Registrar was right in coming to the conclusion that these words by themselves are not distinct and cannot be the basis for registering the mark;

(3) the mere combination of non-distinctive marks here as it does not incorporate any new idea gives no distinctiveness to the mark but merely serves as embellishments. The addition of the pictorial device of the two gold coloured leaves to the words "VIRGINIA GOLD" merely serves to emphasise the descriptive character of the mark;

(4) the appeal is dismissed with costs.

Cases referred to:-

(1) *"Yorkshire Copper" case* (1954) 71 R.P.C. 150.
(2) *British-American Tobacco Co. Ltd.* v. *Tobacco Importers and Manufacturers Ltd. & Ors.* [1963] M.L.J. 196.
(3) *"Diamond T" Trade Mark case* (1921) 38 R.P.C. 373.
(4) *"Rotolok" Trade Mark case* [1968] R.P.C. 227 at p. 230.
(5) *Frank James Davis (trading as The Ustikon Company) and Anor.* v. *The Sussex Rubber Co. Ltd.* 44 R.P.C. 412.
(6) *"BBI Litetrac" Trade Mark case* [1971] R.P.C. 1.

TRADE MARKS.

T. H. A. Potts and *S. Murugasu (Miss)* for the appellant.

R. Magnus (Registrar of Trade Marks) and *Abdul Rahim Rajudin* (Deputy Registrar) for the respondent.

Kulasekaram J.: This is an appeal from the decision of the Registrar of Trade Marks refusing an application made by the appellants, Tobacco Importers and Manufacturers Sendirian Berhad for the registration of a